

Appln No. 10/664,643

Amdt date February 11, 2005

Reply to Office action of December 14, 2004

REMARKS/ARGUMENTS

Claims 6-20 are pending in the above-referenced matter. Claims 1-5 have been cancelled.

Claims 6, 10, and 12 are amended and claim 20 added to further define Applicants' invention.

This is a response to the Office Action dated December 14, 2004 wherein the Examiner rejected claims 10 and 11 under §112, 2nd paragraph, for indefiniteness; rejected claim 12 under §102(b) for being anticipated by Owensby (US Pat. No. 5,324,233); rejected claims 6-8 and 13 under §103(a) for obviousness over Owensby in view of Smith (US Pat. No. 5,176,634); and rejected claims 9, 14, and 15 for obviousness by Owensby and Smith and further in view of Larkin (US Pat. No. 4,608,043). In view of the amendments as indicated above and the remarks that follow, reconsideration and a notice of allowance are respectfully requested.

Allowance of claims 10 and 11 if rewritten to overcome a §112, 2d paragraph, rejection and of claims 16-19 if rewritten to not depend from a rejected base claim is hereby acknowledged.

§112, 2nd Paragraph, Rejection of Claims 10 and 11

The phrase "the compartment filling step" in claim 10 is said to lack antecedent support. Claim 10 has been amended to delete the phrase and is now in proper format. Claim 11 depends from claim 10 and is automatically corrected by the amendment to claim 10.

§102(b) Rejection of Claim 12 by Owensby

In rejecting claim 12 by Owensby, the Examiner contends the '233 patent discloses each and every element of the claimed flexible container including "a top end (54) [that] remains open and forms a gap for providing a channel between the front and rear sheets to receive a filling port; and providing a port (53) interposed between the front and the rear sheets and in communication with a channel in the top end of the pouch."

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Preliminary, for a reference to anticipate a claim under §102(b), it must disclose each and every elements of the claimed invention, including the limitations further defining the elements of the claim.

Applicants submit that Owensby does not anticipate claim 12 by disclosing each and every elements and limitations recited in claim 12. In applying Owensby, the Examiner appears to rely on FIG. 4 of the '233 Owensby patent to show two gaps between the fitment tube 41 and the front and rear sheets just prior to applying the heat bars 10. While it is true there are gaps between the tube 41 and the two sheets, the gaps are eventually sealed when the heat bars 10 are applied to permanently seal the fitment tube 41 to the sheets. If the gaps were not sealed, the container would leak when filled with a solution.

Furthermore, the gaps are only present prior to application of the heat bars 10. Subsequent to applying the heat bars to form a permanent perimeter seal, the gaps are eliminated.

Contrariwise, claim 12 recites a method for forming flexible container, the method comprising the steps of: providing a flexible, transparent front sheet; providing a flexible, vapor impermeable rear sheet; heating the front and rear sheets in a first localized area to fuse together the heated portions of the adjoining surfaces, thereby forming a permanent seal around a portion of a common peripheral edge of said front and rear sheets, the permanent seal having at least one gap therein providing a channel between said front and rear sheets; and providing at least one sacrificial port interposed between the front and rear sheets and in communication with the channel for aseptically filling the container, the at least one sacrificial port attached to the front and rear sheets by a second seal spaced apart from the permanent seal.

As recited, the flexible container has a permanent seal with at least one gap therein providing a channel between said front and rear sheets. Thus, the gap defining the channel exists concurrently with the permanent seal. In contrast, Owensby's container does not have a gap that exists concurrently with the permanent seal. Say differently, when a permanent seal is formed in the container disclosed by Owensby, the gaps disappear (i.e., are sealed). Thus, Owensby cannot anticipate claim 12 under §102(b).

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Although claim 12 is clearly distinguishable over Owensby, Applicants have amended claim 12 as indicated above to further define Applicants' invention. The amendment clearly define a channel that exists and is separate from the seal holding the sacrificial port.

§103(a) Rejection of Claims of Claims 6-8 and 13 by Owensby and Smith

In rejecting claim 6, the Examiner contends that Owensby discloses a method for forming a container essentially as recited "but lacks the specific teaching of the front sheet comprising polypropylene-polyethylene co-polymer blended with styrene ethylene-butylene styrene elastomer." However, the Examiner contends that use of such material for a flexible container is well known in the art as taught by Smith and therefore "it would have been obvious to an ordinary skilled person in the art. . .to have modified the method of Owensby by having provided the specific polypropylene-polyethylene co-polymer blended with styrene ethylene-butylene styrene elastomer of Smith for the front sheet and/or the rear sheet since such material is well known in the art for forming flexible container containing solution."

Preliminarily, for a §103(a) rejection, (1) the applied references must either alone or in combination teach each and every elements of the claimed invention; (2) there must be a suggestion, motivation, or teaching for the proposed modification; and (3) the ination must have a reasonable expectation of success. *MPEP §2143*. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not in applicants' disclosure. *Id.*

Independent claim 6 recites a method for forming flexible container, the method comprising the steps of: providing a flexible, transparent front sheet comprising a polypropylene-polyethylene co-polymer blended with styrene ethylene-butylene styrene elastomer; providing a flexible, vapor impermeable rear sheet; heating the front and rear sheets in a first localized area to fuse together the heated portions of the adjoining surfaces, thereby forming a permanent seal around a portion of a common peripheral edge of said front and rear sheets, the permanent seal having at least one gap therein providing a channel between said front and rear sheets; and providing at least one sacrificial port interposed between the front and rear

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sheets and in communication with the channel for filling the container, the at least one sacrificial port attached to the front and rear sheets by a second seal spaced apart from the permanent seal.

Claim 6 is similar to claim 12, discussed above, in that it recites a flexible container comprising a permanent seal having at least one gap therein providing a channel between said front and rear sheets; and providing at least one sacrificial port interposed between the front and rear sheets and in communication with the channel for filling the container. Owensby does not disclose a gap defining a channel as recited and as discussed above with reference to independent claim 12. However, Smith does not make up for Owensby's shortcomings as Smith is relied on for disclosing a certain type of material for a flexible sheet. Accordingly, Owensby and Smith, alone and in combination, do not disclose each and every elements of the claimed invention as required under §103(a). Nonetheless, Applicants have amended claim 6 as indicated above to further define Applicants' invention.

Because claims 7 and 8 depend from claim 6, they are allowable for the same reasons as claim 6.

Claim 13 depends from claim and is therefore allowable for the same reasons as claim 12.

§103(a) Rejection of Claims 9, 14 and 15 by Owensby, Smith and Larkin

Claims 9 depends from independent claim 6 and claims 14 and 15 depend from claim 12, accordingly, they are allowable over the cited references for the same reasons as discussed above for independent claims 6 and 12. Reconsideration and a notice thereof are respectfully requested.

Regarding new independent claim 20, Applicants submit that it is allowable over the art of record for the same reasons as independent claims 6 and 12.

In view of the foregoing remarks and amendments, it is thought that the application is now in condition for allowance and early notice thereof is respectfully requested.

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Should the Examiner finds it necessary to speak with Applicants' attorney, he is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

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